

APPEAL NO. 171864
FILED SEPTEMBER 25, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 27, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ).¹ The ALJ resolved the disputed issues by deciding that (1) the compensable injury of (date of injury), extends to right leg strain, left leg strain, sprain ligaments of cervical spine, strain muscle fascia tendon of lower back, strain muscle fascia tendon at right shoulder, and strain muscle tendon at right foot but does not extend to multilevel degenerative disease at C5-7; mild to moderate to severe foraminal narrowing in the left C5-7, neural foramina mild spinal canal stenosis at C5-6, left thyroid lobe 2.1 cm cyst, abnormal menstrual bleeding, visualized portion of the heart enlarged and pericardial fluid, right arm strain, and amount fluid within the stomach; (2) the appellant (claimant) reached maximum medical improvement (MMI) on May 13, 2016; (3) the claimant's impairment rating (IR) is zero percent; (4) the employer tendered a bona fide offer of employment (BFOE) to the claimant; and (5) the claimant had disability resulting from the compensable injury of (date of injury), from October 3, 2015, through November 13, 2015; but that the claimant did not have disability from November 14, 2015, through the date of the CCH.

The claimant appealed the ALJ's determinations regarding the issues of extent of injury, BFOE, MMI, IR, and disability for the period from November 14, 2015, through the date of the CCH, arguing that the evidence supports inclusion of the disputed conditions as part of the compensable injury, that she has not reached MMI, that the employer's offer of employment does not meet the requirements of 28 TEX. ADMIN. CODE § 129.6 (Rule 129.6), and that she has had disability from November 14, 2015, through the date of the CCH.

The respondent (self-insured) responded, urging affirmance.

The ALJ's determination that the claimant had disability resulting from the compensable injury from October 3 through November 13, 2015, was not appealed and has become final pursuant to Section 410.169.

¹ Section 410.152 was amended in House Bill 2111 of the 85th Leg., R.S. (2017), effective September 1, 2017, changing the title of hearing officer to ALJ.

DECISION

Affirmed as reformed.

We note that there are two Findings of Fact No. 4 contained in the ALJ's Decision and Order. The second Finding of Fact No. 4 should, in fact, be Finding of Fact No. 5. We reform the ALJ's decision to consecutively number the Finding of Fact Nos. 1 through 7.

The claimant testified that she was injured when she stepped onto a partially open manhole cover and fell into a grease trap. The parties stipulated that the claimant sustained a compensable injury on (date of injury).

EXTENT OF INJURY

The ALJ's determination that the compensable injury of (date of injury), extends to right leg strain, left leg strain, sprain ligaments of cervical spine, strain muscle fascia tendon of lower back, strain muscle fascia tendon at right shoulder, and strain muscle tendon at right foot but does not extend to multilevel degenerative disease at C5-7; mild to moderate to severe foraminal narrowing in the left C5-7, neural foramina mild spinal canal stenosis at C5-6, left thyroid lobe 2.1 cm cyst, abnormal menstrual bleeding, visualized portion of the heart enlarged and pericardial fluid, right arm strain, and amount fluid within the stomach is supported by sufficient evidence and is affirmed.

MMI/IR

The ALJ's determination that the claimant reached MMI on May 13, 2016, with a zero percent IR is supported by sufficient evidence and is affirmed.

DISABILITY

The ALJ's determination that the claimant did not have disability resulting from the (date of injury), compensable injury from November 14, 2015, through the date of the hearing is supported by sufficient evidence and is affirmed.

BFOE

In evidence are two letters from the employer purporting to be BFOEs, one dated January 15, 2016, and the second dated March 10, 2016. In the Discussion section of her Decision and Order, the ALJ stated that both letters met the requirements of Rule 129.6 and we find the evidence admitted supports such statement. Accordingly, the ALJ's determination that the employer tendered a BFOE to the claimant is supported by sufficient evidence and is affirmed.

FINDING OF FACT NO. 1.F.

The parties stipulated on the record that (Dr. P) was appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) to serve as designated doctor for the purpose of addressing extent of the compensable injury. The parties further stipulated that (Dr. D) was appointed by the Division to serve as designated doctor for the purpose of addressing MMI, IR, disability, and return to work. In her Finding of Fact No. 1.F., however, the ALJ incorrectly stated the parties stipulated that:

- F. The Division appointed [(Dr. E)] as designated doctor on the issues of extent of injury, [MMI], and [IR].

The designated doctors in this case are Dr. P and Dr. D. There is no Report of Medical Evaluation (DWC-69) or other medical report in evidence from Dr. E. We accordingly reform Finding of Fact No. 1.F. as follows:

- F. The Division appointed [Dr. P] as designated doctor on the issue of extent of injury.

Because the ALJ failed to incorporate the stipulation that Dr. D was appointed by the Division to serve as designated doctor for the purpose of addressing MMI, IR, disability, and return to work into her Finding of Fact No. 1 as agreed by the parties at the CCH, we reform the ALJ's decision and add the following as Finding of Fact No. 1.H.:

- H. The Division appointed [Dr. D] as designated doctor on the issues of [MMI], [IR], disability and return to work.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), extends to right leg strain, left leg strain, sprain ligaments of cervical spine, strain muscle fascia tendon of lower back, strain muscle fascia tendon at right shoulder, and strain muscle tendon at right foot but does not extend to multilevel degenerative disease at C5-7; mild to moderate to severe foraminal narrowing in the left C5-7, neural foramina mild spinal canal stenosis at C5-6, left thyroid lobe 2.1 cm cyst, abnormal menstrual bleeding, visualized portion of the heart enlarged and pericardial fluid, right arm strain, and amount fluid within the stomach.

We affirm the ALJ's determination that the claimant reached MMI on May 13, 2016, with a zero percent IR.

We affirm the ALJ's determination that the claimant did not have disability resulting from the (date of injury), compensable injury from November 14, 2015, through the date of the hearing.

We affirm the ALJ's determination that the employer tendered a BFOE to the claimant.

We reform the ALJ's decision to consecutively number the Finding of Fact Nos. 1 through 7.

We reform Finding of Fact No. 1.F. to state that the parties stipulated that the Division appointed Dr. P as designated doctor on the issue of extent of injury. We reform the ALJ's decision to add the following as Finding of Fact No. 1.H.:

H. The Division appointed [Dr. D] as designated doctor on the issues of MMI, IR, disability and return to work.

The true corporate name of the insurance carrier is **HOUSTON INDEPENDENT SCHOOL DISTRICT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**RICHARD CARRANZA, SUPERINTENDENT
4400 WEST 18TH STREET
HOUSTON, TEXAS 77092.**

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge